

द्यसाधारण EXTRAORDINARY

भाग II—जण 2 PART II—Section 2

प्राचिकार से प्रकाशित PUBLISHED BY AUTHORITY

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इस भाग में भिन्न पृष्ट संख्या दी जाती है जिससे कि यह ग्रलग संकलन के रूप में रक्षा जा सकें। Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 23rd July, 1971:—

Bill No. XVI of 1971

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-second Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1971.

Short title.

2. In article 145 of the Constitution,—

Amendment of article 145.

(i) in clause (3), after the existing proviso, the following proviso shall be inserted, namely:—

"Provided further that when any case or a reference under article 143 involves a decision on the validity or otherwise of a law made by Parliament amending any provision of this Constitution, such matter shall be decided by a full Court consisting of as far as may be the Chief Justice and all Judges of the Supreme Court."

(ii) to clause (5) the following provisos shall be added, namely:—

"Provided that when a full Court sits, the majority judgment shall have the concurrence of not less than two-thirds of the number of Judges present at the hearing of the case:

Provided further that no such concurrence shall be necessary when the full Court is making a report under article 143 or exercising its power of review conferred by article 137 of a judgment invalidating a law made by Parliament amending any provision of this Constitution."

STATEMENT OF OBJECTS AND REASONS

The judgment rendered by the Supreme Court in Golaknath's case had held the Fourth and Seventeenth Amendments to the Constitution invalid with prospective effect, and disables Parliament from making any law reducing or taking away any of the fundamental rights including such law by way of an amendment to the Constitution. Parliamentary opinion and public opinion in the country are strongly against the position resulting from the said judgment. Earlier, the Supreme Court had ruled in its decisions in Sankari Prasad's case and Sajjan Singh's case that Parliament has such power and such law is valid.

The difficulty created by the decision in Golaknath's case cannot be solved by Parliamentary legislation including amendment of the Constitution. Even the Bill of the late Shri Nath Pai as reported by the Joint Select Committee is inadequate to meet the purpose. The difficulty cambe resolved only by a rethinking by the Supreme Court itself either in a case or on a reference or review. A major Bill relating to amendment of the Constitution restricting or taking away certain forms of private property rights including compensation and abolition of privy purses and privileges of ex-rulers, is likely to come to the anvil of Parliament in due course. Such a Bill has necessarily to come from the Government side. The present Bill would pave the way for the successful implementation of such legislation when passed and which is a sine qua non for building up a socialist society.

The purpose of this Bill is to confine invalidating of Parliamentary legislation in relation to amendment of the Constitution to cases where twothirds of all the Judges of the Supreme Court were to decide on invalidation, and not on the basis of a simple majority as at present. It is for this purpose that the Bill provides that a full Court, as far as possible, of all the Judges should hear and decide such cases and not a minimum of five Judges only as at present. So two-thirds of the full Court has to concur to strike down an amendment of the Constitution. The necessity to constitute a full Court will apply also to a review under Article 137 and a reference under Article 143. However, when such review or reference is on a judgment invalidating a Parliamentary law of constitutional amendment, the review or reference can be decided by a simple majority of the full Court. This would pave the way for a simple majority of all Judges of the Supreme Court to depart from the decision in Golaknath's case and restore the position secured by the decision in Sankari Prasad's case and Sajjan Singh's case referred to above.

K. CHANDRASEKHARAN.

B. N. BANERJEE,
Secretary.